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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUNAN CHEN, KELLY YAO WANG,
CHANGSHUANG WANG,
JINSHUANG LIU, LICHU CHEN, and
WENQUEI HONG,

Plaintiffs,

-vs.-

COUNTY OF SANTA BARBARA;
SANTA BARBARA COUNTY
SHERIFF'S DEPARTMENT; CAPRI
APARTMENTS AT ISLA VISTA;
ASSET CAMPUS HOUSING; and

Case No.: 2:15-CV-01509-JFW
(JEMx)
[Hon. John F. Walter]

**PLAINTIFFS' OPPOSITION TO
DEFENDANT HI DESERT
MOBILE HOME PARK L.P'S
MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: July 13, 2015
Time: 1:30 p.m.

DOES 1 through 200, Inclusive,
Defendants.

Ctrm: 16

Complaint Filed: March 2, 2015
Trial Date: April 26, 2016

COME NOW PLAINTIFFS, JUNAN CHEN, KELLY YAO WANG,
CHANGSHUANG WANG, JINSHUANG LIU, LICHU CHEN, and WENQUEI
HONG (hereinafter, "Plaintiffs") who hereby respectfully submit the below
Memorandum of Points and Authorities in Opposition to the Motion to Dismiss
brought by Defendant Hi Desert Mobile Home Park L.P. (hereinafter, "Defendant"
or "Capri").

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Despite that fact that defendant HI DESERT MOBILE HOME PARK (“Capri”) had been specifically informed that their tenant Elliot Rodger (“Rodger”) posed a serious threat of violence to any roommates he was paired with, and despite the fact that Capri was aware of numerous incidents which indicated Rodger was an unsuitable and unstable roommate, Defendant Capri affirmatively undertook to assign and pair Rodger as roommate with decedents Weihan “David” Wang (hereinafter “Wang”) and Cheng-Yuan “James” Hong (“Hong”). Capri undertook to pair Rodger and the decedents as roommates for a commercial purpose, and the decedents relied on Capri and trusted that Capri had paired them with a safe and appropriate roommate. Capri, in pairing the Rodger and decedents Hong and Wang as roommates, failed to take even the simplest measures, i.e. warning or informing the decedents and/or their parents of what they had been told about Rodger by Rodger’s former roommate. Capri further failed to exercise any of the many other options available to them at the time to keep their tenants safe. Instead, defendant Capri took the path of no action, which served their financial interest at increased risk to their tenants, and ultimately Hong, Wang, and their guest, George Chen (“Chen”) were stabbed and killed by Rodger inside their apartment.

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1 Plaintiffs do not allege that Defendant Capri had some unlimited duty to
2 protect their sons, the decedents, from the criminal acts of the entire world. Plaintiffs
3 allege that Defendant Capri, in undertaking to pair the decedents together with Elliot
4 Rodger for a commercial purpose, and by placing them as roommates within the four
5 walls of a dwelling together, assumed and therefore owed them a specific and
6 reasonable minimum duty to warn and protect them from a specific threat of
7 violence. That threat was that Rodger “was a threat and that he posed a danger,”
8 which Capri was informed of as early as January of 2012.

11 Defendant misstates the measures Plaintiffs allege should have been taken and
12 further misstates the “burden” which would be imposed. Plaintiffs in no way assert
13 that a landlord should “diagnose” mental health issues or have to hire professionals
14 to screen their tenants. Plaintiffs are instead focused on the duty to take reasonable,
15 minimal action based on a known likelihood or propensity for violence. In the instant
16 case, Capri was specifically put on notice that Rodger was a “threat” and “posed a
17 danger” to his roommates. When a landlord is handed a letter containing an
18 unambiguous warning of violence, there is nothing to “diagnose,” the landlord is on
19 notice. Rodger’s known propensity for violence towards his roommates is what is at
20 issue, regardless of the underlying cause, had it be mental illness, criminal motive,
21 desire for revenge, or any other potential reason. To conflate this issue with
22 diagnosing and discriminating against mental illness is misleading and inaccurate.
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1 The “burden” Plaintiffs would impose is, at its most basic, virtually *de*
2 *minimis*: a simple warning. A landlord informing or warning a tenant whom the
3 landlord is undertaking to pair as a roommate, whether verbally, via email, or via
4 letter, that they had been told about a specific threat of violence concerning the
5 would-be roommate, would cost nothing (or next to nothing), could be delivered by
6 existing property management personnel quickly and discreetly, and make the now-
7 informed tenants fully able to determine whether to accept that risk, demand a
8 change, or take any other action they see fit to keep themselves safe. Further, that is
9 merely the floor of the list of options available to the landlord. The landlord could
10 choose to investigate to determine what needs to be disclosed to the would-be
11 roommates, if anything, in order to keep them safe. Further, the landlord, in addition
12 to or as a substitute for the warning, in its business discretion, could choose to only
13 assign a tenant like Rodger to his own unit, could choose to refuse to renew such a
14 tenant’s lease when it expired, or could choose to evict such a tenant, among other
15 options.
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21 Finally, Defendant Capri misstates Plaintiffs’ allegations with respect to
22 “actual knowledge.” Plaintiffs allege that Capri had “actual knowledge” that Rodger
23 posed a threat of violence to his roommates based on specific communications sent
24 by a former roommate of Rodger to Defendant Capri, including a letter, which
25 unequivocally informed Defendant that Rodger was a threat and posed a danger to
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1 the roommate. The rest of the “six incidents” that Defendant refers to all provide
2 context and confirmation which should have served to heighten the seriousness of
3 the specific warning Capri was given. Plaintiffs do not allege that some vague
4 constellation of incidents led to “actual knowledge,” Plaintiffs allege that a specific
5 letter containing a specific warning led to actual knowledge of Rodger’s propensity
6 for violence toward those he was roommates with, and the other five incidents served
7 to add credibility and gravity to that warning.
8

9
10 For the foregoing reasons, this Court should deny Defendant Capri’s motion to
11 dismiss Plaintiffs’ complaint.
12

13 **II. SUMMARY OF ALLEGATIONS**

14 Defendant Capri’s summary of the allegations in Plaintiffs’ first amended
15 complaint is accurate, however some critical aspects of the allegations, specifically
16 Capri’s affirmative undertaking of pairing the roommates, were left out.
17

18 Defendant CAPRI operates a large commercial student housing property in
19 Isla Vista that primarily services students of the University of Santa Barbara and
20 Santa Barbara City College. [¶20]
21

22 On June 4, 2011, Rodger moved to Isla Vista and Defendant paired Rodger
23 with two roommates to live with in Apt. #7 in the main Capri complex on Seville
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1 Road. [¶21].¹ In August of 2011, Capri assigned two new roommates, both male
2 Hispanics, to be Rodger's roommates in Apt. #7. [¶22]. Within days of them moving
3 in, Rodger instigated a serious conflict between himself and his new roommates.
4 [¶22]. Rodger went to Defendant's leasing manager and explained everything that
5 had happened. [¶22]. Shortly thereafter, Rodger signed a lease for another, larger
6 apartment. [¶22].
7
8

9 In September of 2011, Rodger moved into his new apartment and Capri
10 assigned Spencer Horowitz ("Horowitz") as his roommate. [¶23]. Within a few
11 months, Rodger again initiated significant conflict between himself and his
12 roommate, and the roommates became hostile towards each other and their
13 roommate relationship became unworkable. [¶24].
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16 On information and belief, Plaintiffs allege that in January of 2012, Horowitz
17 began to fear for his personal safety. Horowitz informed his father that he believed
18 Rodger to be mentally ill and posed a threat of violence. [¶25]. Horowitz and his
19 father began taking action to remove Horowitz from his living situation due to the
20 danger posed by Rodger. [¶25]. Horowitz and his father communicated to Capri,
21 both in in-person meetings and through written correspondence, that Rodger was a
22 threat and posed a danger to Horowitz. [¶25]. Horowitz and his father eventually
23 arranged for Horowitz to move out of the apartment and find other living
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27 _____
28 ¹ All subsequent bracketed references will be to Plaintiffs' first amended complaint

1 accommodations. [¶25].

2 On September 11, 2012, Rodger “threw a wild tantrum, screaming and crying
3 for hours on end” all the while thrashing the furniture with a wooden practice sword.
4 [¶27]. On information and belief plaintiffs allege that Rodger’s screaming was
5 overheard by Rodger’s neighbors and the apartment manager. [¶27].
6

7 In September 2012, Capri transferred Rodger back to Apt. #7 on Seville Road.
8 [¶28]. Rodger later wrote “I trusted that the manager had the sense to pair me with
9 mature people, knowing my experiences with those two barbaric housemates I had to
10 deal with a year previously.” [¶28]. After about a month (October of 2012), CAPRI
11 assigned Rodger two new roommates, whom he described as “timid geeks” who
12 were “quiet, respectful and friendly.” [¶28].
13

14 In April of 2013, Rodger posted hateful, angry, deeply misogynist and racist
15 material under his own name on various websites. [¶32]. Virtually all of the content
16 Rodger had posted online was easily discoverable with simple Google searches of
17 his name. [¶32].
18

19 On July 20, 2013, Rodger went to a party in Isla Vista in an intoxicated state.
20 [¶34]. He became angry at a group of girls whom he believed were ignoring him, and
21 tried to push some of them off a ledge. [¶34]. A group of male students intervened
22 and pushed Rodger off the ledge, breaking his ankle. [¶34] As he stumbled away
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filed on May 20, 2015 (Docket No. 35) unless otherwise noted.

1 from the party, Rodger realized that he had lost his Gucci sunglasses during the
2 altercation. [¶34]. Rodger went to the wrong house and demanded his sunglasses
3 back. [¶34]. The occupants of this house called Rodger names and began kicking and
4 punching him. [¶34]. Rodger left this house and fled the area. [¶34]. Rodger returned
5 home bruised, disheveled and crying, and told a neighbor at the Capri Apartments
6 “I’m gonna kill all those motherf***ers and kill myself.” [¶34]. Plaintiffs allege on
7 information and belief that this conversation was overheard by Rodger's neighbors
8 and the apartment manager. [¶34].

11
12 In September of 2013, after surgery on his ankle and following a period of
13 recuperation at his mother’s house, Rodger returned to Apt. 7. [¶36]. During this
14 time, Capri affirmatively undertook to pair Hong, Wang, and Rodger as roommates,
15 in Apt. #7, despite the fact that CAPRI had been warned that Rodger was a violent
16 and dangerous threat. [¶36]. Hong and Wang reasonably relied on Capri’s
17 undertaking to pair and assign them a roommate. [¶36]. Capri made no disclosure
18 regarding Rodger and gave Hong and Wang no warning of any kind that Rodger had
19 had serious conflicts with his previous roommates and that CAPRI had been warned
20 that he posed violent and dangerous threat to his roommates. [¶36].

23
24 On January 15, 2014, Rodger placed Hong under citizen’s arrest related to a
25 dispute over pots and candles and called the SBCSD. [¶37]. After the deputies
26 arrived at Apt. #7 and interviewed all parties, they arrested Hong for an infraction
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1 (petty theft). [¶37] This charge against Hong was ultimately dismissed due to
2 insufficient evidence. [¶37]. Plaintiffs allege on information and belief that defendant
3 was aware that law enforcement officer had come to Apt. #7 due to a dispute
4 between Rodger and his roommates. [¶37].

6 In April of 2014, Rodger uploaded numerous videos to YouTube expressing
7 his jealousy and rage toward women, minorities, and sexually active people. [¶39].

9 On April 30, 2014, SBCSD visited Rodger for a “wellness check” in response
10 to a call by a mental health worker who had seen Rodger’s online content. [¶40]. The
11 deputies spoke to Rodger at the doorstep of the apartment but did not ask to enter the
12 apartment or search his room. [¶40]. They left after Rodger told them that it was a
13 misunderstanding. [¶40]. Plaintiffs allege on information and belief that defendant
14 was aware that law enforcement had come to Apt. #7 to conduct a welfare check on
15 Rodger. [¶40].

18 On May 23, 2014, Rodger killed Hong and Wang, and their visiting friend
19 Chen, with knives and other weapons inside Apt. #7. [¶41]. Rodger then headed out
20 into Isla Vista to carry out a shooting rampage that left three more people dead and
21 fourteen wounded. [¶41].

24 **III. LEGAL STANDARD**

25 The Federal Rules of Civil Procedure require that a complaint provide the
26 defendant with “fair notice of what the ... claim is and the grounds upon which it
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1 rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007). In reviewing the sufficiency of a
 2 complaint, the Court must accept all well-pleaded facts as true and *draw all*
 3 *permissible inferences in favor of the plaintiff*. Active Disposal Inc. v. City of
 4 Darien, 635 F.3rd 883, 886 (7th Cir.2011) (emphasis added).

6 A motion to dismiss asks whether the complaint “contain[s] sufficient factual
 7 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ”
 8 Ashcroft v. Iqbal, 556 U.S. 662, 697 (2009). According to the court, “[a] claim has
 9 facial plausibility when the plaintiff pleads factual content that allows the court to
 10 draw the reasonable inference that the defendant is liable for the misconduct
 11 alleged.” Id. This plausibility determination is “a context-specific task that requires
 12 the reviewing court to draw on its judicial experience and common sense.” Munson
 13 v. Gaetz, 673 F.3rd 630, 633 (7th Cir.2012).

17 **IV. PLAINTIFFS HAVE SUFFICIENTLY PLEADED FACTS WHICH** 18 **GIVE RISE TO A DUTY AS TO CAPRI AS A MATTER OF LAW**

20 **A. Capri Assumed A Duty To Decedents Through Their Affirmative** 21 **Undertaking To Pair Hong And Wang As Roommates With Rodger, Which** 22 **Created A Special Relationship**

24 A defendant may owe an affirmative duty to protect another from the conduct
 25 of third parties if he or she has a “special relationship” with the other person.
 26 Delgado v. Trax Bar & Grill, 36 Cal. 4th 224, 234 (2005). “Liability may be imposed
 27

1 on a person who has no general duty to act, but who has voluntarily assumed a
2 protective duty toward an individual and undertakes action on his or her behalf,
3 thereby inducing reliance” Schwartz v. Helms Bakery Ltd., 67 Cal.2d 232, 238
4 (1967).

6 “It is well established that a person may become liable in tort for negligently
7 failing to perform a voluntarily assumed undertaking even in the absence of a
8 contract so to do. A person may not be required to perform a service for another but
9 he may undertake to do so—called a voluntary undertaking. In such a case the person
10 undertaking to perform the service is under a duty to exercise due care in performing
11 the voluntarily assumed duty, and a failure to exercise due care is negligence. Dean
12 Prosser says, “[I]f the defendant enters upon an affirmative course of conduct
13 affecting the interests of another, he is regarded as assuming a duty to act, and will
14 thereafter be liable for negligent acts or omissions,”” Valdez v. Taylor Auto. Co.,
15 129 Cal.App.2d 810, 817 (1954). The extent of a landlord's duty in these
16 circumstances is also framed by the “negligent undertaking” (or Good Samaritan)
17 doctrine: One who, having no initial duty to do so, voluntarily undertakes to provide
18 another with protective services has a duty to exercise due care in performing that
19 undertaking if either (i) the failure to exercise due care increases the risk of harm to
20 the other person or (ii) the other person reasonably relies upon that undertaking and
21 suffers injury as a result. See Delgado, supra, 36 Cal. 4th 224 at pg. 249.
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1 In the instant case, Capri's affirmative action of pairing the roommates
 2 together assumed an even higher level of duty (and a lower level of needed
 3 foreseeability) than existed by virtue of the landlord-tenant relationship alone.
 4 Defendant Capri's moving papers largely ignore this assumption of duty. It is
 5 undisputed that Hong and Wang did not know Rodger and did not request to be
 6 paired with Rodger. It is further undisputed that Defendant chose and otherwise
 7 selected Rodger to be paired with Hong and Wang to further the commercial interest
 8 of running their student housing enterprise. Hong and Wang submitted to Capri's
 9 roommate pairing process and relied on Capri to pair them appropriately and safely,
 10 which Capri did not do. By virtue of Capri's affirmative act, Capri assumed a duty,
 11 which included at a minimum warning or informing the decedents of what they had
 12 been told about Rodger by Horowitz.
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17 **B. Even Absent Any Assumed Duty, Capri Owed A Duty To Decedents**
 18 **Because A Special Relationship Existed, Capri Had Actual Knowledge That**
 19 **Specific Third-Party Violence Was Likely To Occur, And There Were Specific,**
 20 **Minimally Burdensome Measures Capri Should Have Performed To Prevent**
 21 **The Harm**
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24 "A landlord generally owes a tenant the duty, arising out of their special
 25 relationship, to take reasonable measures to secure areas under the landlord's control
 26 against foreseeable criminal acts of third parties. [citations]. In each case...the
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1 existence and scope of a property owner's duty to protect against third party crime is
 2 a question of law for the court to resolve. [citations].” Castaneda v. Olsher, 41
 3 Cal.4th 1205, 1213 (2007).
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5 “[I]n cases where the burden of preventing future harm is great, a high degree
 6 of foreseeability may be required. [Citation.] On the other hand, in cases where there
 7 are strong policy reasons for preventing the harm, or the harm can be prevented by
 8 simple means, a lesser degree of foreseeability may be required. [Citation.] We
 9 recently reaffirmed this analysis, which we described as a “sliding-scale balancing
 10 formula.” Castaneda, supra, 41 Cal. 4th 1205 at pg. 1213.
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13 Further, foreseeability turns on a totality of the circumstances analysis. As the
 14 California Supreme Court held in *Isaacson v. Huntington Memorial Hospital*:
 15 “[f]oreseeability does not require prior identical or even similar events.” The court
 16 reasoned that “[w]hether a given criminal act is within the class of injuries which is
 17 reasonably foreseeable depends on the totality of the circumstances and not on
 18 arbitrary distinctions” Isaacs v. Huntington Memorial Hospital, 38 Cal.3d 112,
 19 127 (1985) citing Kwaitkowski v. Superior Trading Co., 123 Cal.App.3d 324, 329
 20 (1981).
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24 “The duty analysis...requires the court in each case (whether trial or appellate)
 25 to identify the specific action or actions the plaintiff claims the defendant had a duty
 26 to undertake.... ‘First, the court must determine the specific measures the plaintiff
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1 asserts the defendant should have taken to prevent the harm. This frames the issue
 2 for the court's determination by defining the scope of the duty under consideration.
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 4 Second, the court must analyze how financially and socially burdensome these
 5 proposed measures would be to a landlord, which measures could range from
 6 minimally burdensome to significantly burdensome under the facts of the case.
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 8 Third, the court must identify the nature of the third party conduct that the plaintiff
 9 claims could have been prevented had the landlord taken the proposed measures, and
 10 assess how foreseeable (on a continuum from a mere possibility to a reasonable
 11 probability) it was that this conduct would occur.” Castaneda, supra, 41 Cal. 4th
 12 1205 at pg. 1214.
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14 **C. Capri Had Actual Knowledge That Rodger Posed A Specific**
 15 **“Threat” And Was A “Danger” To His Roommates**
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17 Capri was warned by their tenant Horowitz that Rodger was “a threat” and
 18 posed “a danger” to his roommates. As set forth in Paragraph 25 of Plaintiffs’ First
 19 Amended Complaint “Horowitz and his father communicated to CAPRI and ASSET,
 20 both in in-person meetings and through written correspondence that Rodger was a
 21 threat and that he posed a danger to Horowitz.” [¶27] Defendants concede this
 22 communication was pleaded by Plaintiffs. “[T]he court should take the well-pleaded
 23 facts as they appear in the complaint and extend to the claimant every reasonable
 24 inference which is in his or her favor.” See Pihl v. Massachusetts Dep’t of Educ., 9
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1 F.3d 184, 187 (1993).

2 The Merriam-Webster dictionary definition of “danger” includes the following
3 meanings: “the possibility that you will be hurt or killed,” and; “a person or thing
4 that is likely to cause injury, pain, harm, or loss.” This warning, given to Capri,
5 unambiguously informed Capri that Rodger was reasonably likely to take violent
6 action, potentially including the violent stabbing that ultimately occurred, against
7 any roommate he was paired with.
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10 “[W]hen the third party crime is committed by a tenant, foreseeability turns on
11 whether the landlord had “notice of [the tenant's] propensity for violence.
12 [citations].” Barber v. Chang, 151 Cal. App. 4th 1456, 1464 (2007). ‘[I]n cases
13 where the burden of preventing future harm is great, a high degree of foreseeability
14 may be required. [Citation.] On the other hand, in cases where there are strong policy
15 reasons for preventing the harm, or the harm can be prevented by simple means, a
16 lesser degree of foreseeability may be required.’ ” Barber, supra, 151 Cal. App. 4th
17 1456 at pg. 1464.
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21 “[N]o matter whether a heightened or lesser degree of foreseeability was
22 required and no matter whether the actual crime committed or only similar conduct
23 needed to be foreseen—foreseeability must be measured by what the defendant
24 actually knew.” Margaret W. v. Kelley R., 139 Cal. App. 4th 141, 156 (2006).
25 Plaintiffs easily satisfy this burden, the Defendant was literally handed “actual
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1 notice” in the form of a letter. In Margaret W., a fifteen-year old plaintiff endured a
2 brutal sexual assault when she left a sleepover at her girlfriend's house with boys in a
3 drunken state. The plaintiff in that case brought a negligence action against the
4 mother who had hosted the sleepover. The plaintiff’s allegations that the acts were
5 foreseeable were based solely on constructive knowledge or information the plaintiff
6 alleged the defendant mother should have known. See Margaret W., *supra*, 139 Cal.
7 App. 4th 141 at pg. 145. The instant case is a completely different scenario due to the
8 letter and specific warning as well as the affirmative undertaking to “pair” the
9 roommates by Capri which assumed a minimum duty to “pair” them reasonably.
10

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13 With respect to the other incidents which Defendant Capri was aware of which
14 made the violence foreseeable (Rodger’s August 2011 conflict with his Hispanic
15 roommates [¶22]; the “screaming” and “thrashing” incident [¶27]; the “I’m gonna
16 kill all those motherf***ers” incident [¶34]; the law enforcement visit of January
17 15, 2014, [¶37] and; the law enforcement visit of April 30, 2014 [¶40]), these
18 instances primarily serve to add gravity and credibility to the warning letter written
19 by Horowitz and highlight Rodger’s non-suitability as a roommate in the context of
20 that warning.
21

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24 Plaintiffs have pleaded that Capri had an “apartment manager” on site. [¶27].
25 Plaintiffs allege that Defendant Capri had actual knowledge of the incidents above
26 based on the day and night presence of that manager. Unlike other apartments where
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1 there is no landlord (or agent of the landlord) present to monitor what is happening
2 on site, Defendant Capri actually had someone doing just that. Defendant Capri,
3 through its apartment manager, had actual knowledge of not only the letter which
4 warned that Rodger was a “danger” and a “threat,” but the “reasonable inference”
5 can be drawn that the manager overheard or otherwise had knowledge of Rodger’s
6 screaming and thrashing, overheard or otherwise had knowledge of the “kill those
7 motherf***ers” threat made in the courtyard, and that law enforcement officers had
8 entered the property and gone to Apartment #7 on two occasions. Viewing every
9 reasonable inference in favour of the Plaintiff, each of these incidents were known
10 by Defendant Capri, and yet recklessly ignored.
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14 However, even if none of these “other” instances had occurred at all, the letter
15 could stand on its own as direct, specific, actual knowledge that Rodger posed a
16 threat. When the other instances are added to that letter of warning, the threat of
17 violent harm is made even more foreseeable. Because the analysis of foreseeability is
18 a “totality of the circumstances” analysis, per Isaacs, these other instances are
19 relevant and go to the “totality” of the foreseeability of Rodger’s violent acts. Isaacs,
20 supra, 38 Cal.3d 112 at pg. 130.
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D. There Were Specific Measures Which Plaintiffs Claim Should Have Been Performed By Defendant

Defendant misstates what measures Plaintiffs allege should have been taken. Plaintiffs allege that, at a reasonable minimum, Defendant Capri should have informed or warned Hong and Wang about the threat posed by Rodger, nothing more. Plaintiff offers additional specific measures as options which, in Defendant's business discretion, could have been taken in addition to, as a supplement to, or instead of warning or informing the decedents. This is important because the "burden" discussion must be framed around the minimum duty of warning, and also because the additional "optional" measures actually make it easier for Defendant to comply – within their discretion if any other options are more appealing or less burdensome than the "warning" option, they could take that option instead.

Plaintiffs allege that the following specific measures could and should have been performed by Defendant, in ascending order of burden: (1) Simply communicate to Hong and Wang that Capri had been informed that Rodger "was a threat" and "posed a danger" to one of his former roommates [¶¶ 36, 53, 56]; (2) investigate Rodger to be better informed about his suitability as a roommate and tenant, and to better judge the credibility of the warning given by Horowitz, in order to determine what other actions must be taken (this could include simple internet searches or checks of social media – cost free to the Defendant) [¶¶ 36 and 56]; (3)

1 arrange for Rodger to remain a tenant, but to decline to pair him with other
 2 roommates; (4) let Rodger's lease expire and decline to extend or continue his
 3 tenancy, and; (5) to evict Rodger. [¶¶ 36, 53, 56].
 4

5 **E. The Burden Placed On Defendant To Undertake These Measures**
 6 **Was Minimal**

7
 8 Defendant radically misstates the “burden” Plaintiffs would impose on
 9 Defendant – a simple email, letter, note, or conversation could have been directed to
 10 the decedents about the warnings Capri had received about their new roommate (or
 11 roommate-to-be). This “warning” would have been, if not completely cost-free,
 12 virtually cost-free (the cost of stationary and postage), could have been easily carried
 13 out by existing employees (property management personnel), and would have taken
 14 taken *de minimis* time and labor to perform. Defendant's arguments regarding the
 15 burdens associated with diagnosing and disclosing mental illness and discriminating
 16 on the basis of disability are not relevant, as Plaintiffs have not alleged that
 17 Defendant has any duty to take those actions.
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21 Defendant also totally misstates the alleged “burden” with respect to any
 22 diagnosis of mental illness. Defendant's moving papers conflate “mental illness” and
 23 likelihood to commit violence as one in the same. In the instant case, Rodger was
 24 dangerous and posed a “threat” due to the fact he was mentally ill. However, the
 25 important fact is that he was dangerous and posed a threat, not why he was
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1 dangerous and posed a threat. Defendant Capri was in a good position and on equal
2 footing with every other commercial enterprise in terms of its ability to make
3 reasonable and common sense determinations of whether or not someone poses a
4 threat of violence. This is doubly clear under the instant facts, where Capri was
5 handed a letter which notified them as such.
6

7
8 The instant case is critically distinguishable from the Davis case cited by the
9 Defendant. Plaintiffs do not allege that Capri was warned Rodger was “losing his
10 mind,” Capri was warned that Rodger was “dangerous.” In Davis a mentally ill
11 tenant shot another tenant, who lived in a different unit, as he walked by her door.
12 The landlord in that case, knew (or had been informed) that the shooter, a Ms.
13 Townsend, was “losing her mind” and her mental condition was “deteriorating.” The
14 landlord also was informed that Ms. Townsend was exhibiting bizarre behavior such
15 as talking to herself and “casting spells” on tenants as they walked by. Davis v.
16 Gomez, 207 Cal. App. 3d 1401, 1403 (1989).
17
18

19
20 As a threshold matter, the facts in the instant case are completely different
21 because of the affirmative pairing of the roommates in a single unit by Capri, who in
22 doing so, assumed a duty to perform that pairing reasonably. That assumed duty all
23 but obviates the need for further duty analysis, however, Plaintiffs have still pleaded
24 facts sufficiently different from the Davis case to establish duty regardless.
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1 The Davis case dealt with tenants from separate units, in the instant case the
2 decedents were affirmatively selected to live within the same four walls as Rodger.
3
4 The Davis Plaintiffs alleged that notice of Ms. Townsend's bizarre behavior alone
5 was enough to establish foreseeability and therefore duty, in the instant case,
6 Plaintiffs allege Defendant had actual notice and was specifically notified that
7
8 Rodger "was a threat" and "posed a danger." Finally, the Davis Plaintiffs failed to
9 establish what action the landlord could have taken that would have made a
10 difference, in the instant case, Plaintiffs have set forth specific, detailed, and
11 minimally burdensome actions that Defendants could have taken to protect their
12 tenants. See Davis, supra, 207 Cal.App.3d 1401 at pg. 1406.

14 Even if Plaintiffs were alleging that the burden on the Defendant had included
15 evicting Rodger, Davis supports the proposition that, when information regarding a
16 serious threat arises, a duty to evict can be appropriately found. "Under
17 circumstances of the present variety, the landlord is often caught in the middle of
18 competing tenant interests, and stands at risk no matter what course of action is
19 decided upon. It is usually a classic 'no win' situation. Yet, if it were reasonably
20 foreseeable that an innocent tenant might be killed, the possibility of legal action by
21 the evicted tenant obviously becomes of subordinate concern." Davis, supra, 207
22 Cal.App.3d 1401 at pg. 1404.

26 ///

1 Similarly, in Barber v. Chang, *supra*, 151 Cal.App.4th at pg. 1468, the Court
 2 referenced the Supreme Court's Ann M. decision and observed that a landlord's duty
 3 "may include investigating the incident to determine whether to evict the potentially
 4 violent tenant, threatening to evict the tenant, or invoking the aid of police on a
 5 credible report of a brandishing crime committed by one tenant against another." See
 6 Ann M. 6 Cal.4th 666, 679 (1993).
 7
 8

9 **F. Rodger's Violent Attack On Decedents Was Foreseeable And**
 10 **Consistent With The Warnings That Had Been Previously Given To Capri**
 11

12 Plaintiffs do not allege that Capri had a duty to predict that Rodger would
 13 walk out the door and commit a rampage after killing Hong, Wang, and Chen.
 14 Plaintiffs only allege, importantly, that the violence that took place behind the closed
 15 door of Apartment #7 was foreseeable based on the totality of the circumstances that
 16 Capri was aware of. [¶ 52]. The specific warning that Rodger was "a threat" and
 17 posed "a danger," supported by the other incidents that Capri was aware of, made it
 18 reasonably foreseeable that physical violence, including stabbing, was reasonably
 19 likely to occur to anyone Rodger was paired with.
 20
 21

22 The Supreme Court of California has held: "While prior similar incidents are
 23 helpful to determine foreseeability, they are not required to establish it. Other
 24 circumstances may also place the landowner on notice of a dangerous condition. A
 25 rule which limits proof of foreseeability to evidence of prior similar incidents
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1 automatically precludes recovery to first-injured victims. Such a rule is inherently
2 unfair and contrary to public policy.” Isaacs, *supra*, 38 Cal.3d 112, 135. Simply put,
3 there is no “one free attack” rule under California law.
4

5 “Foreseeability ‘is not to be measured by what is more probable than not, *but*
6 *includes whatever is likely enough in the setting of modern life that a reasonably*
7 *thoughtful [person] would take account of it in guiding practical conduct.*
8

9 [Citation.]’ Thus, in determining the existence of a landowner’s duty to protect
10 invitees from the wrongful conduct of third persons, foreseeability is measured by all
11 of the circumstances including the nature, condition and location of the defendant’s
12 premises and defendant’s prior experience, bearing in mind that what is required to
13 be foreseeable is the general nature of the event or harm, not its precise nature or
14 manner of occurrence.” Onciano v. Golden Palace Restaurant, Inc., 219 Cal. App. 3d
15 385, 392 (emphasis added).
16
17

18 The general nature of the foreseeable event or harm was physical violence
19 committed by Rodger upon one of his roommates. That harm (stabbing) could have
20 been prevented by simple means (a simple warning to the tenants about Rodger).
21 Using the “sliding scale analysis” under Castaneda, even if the facts did not give rise
22 to “heightened foreseeability,” even “lesser foreseeability” could be sufficient under
23 the circumstances.
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1 Finally, Plaintiffs allegations pass the test set forth in Ballard, as referenced in
2 the Defendant's moving papers. The "court's task -- in determining 'duty' -- is not to
3 decide whether a particular plaintiff's injury was reasonably foreseeable in light of a
4 particular defendant's conduct, but rather to evaluate more generally whether the
5 category of negligent conduct at issue is sufficiently likely to result in the kind of
6 harm experienced that liability may appropriately be imposed on the negligent
7 party." Ballard v. Uribe, 41 Cal.3d 564, 572, n. 6 (1986). The harm that occurred to
8 the decedents was stabbing, regardless of what occurred after Rodger walked out the
9 door of Apartment #7 after killing his roommates and their guest. The foreseeability
10 analysis must turn on what happened to the decedents. Defendant Capri was warned
11 and informed that Rodger posed a threat of violence and Capri took no action to
12 warn or inform the young men they had affirmatively undertaken to pair as Rodger's
13 roommates. With respect to finding duty, the negligent conduct at hand, failure to
14 warn and protect tenants from a known violent danger, is likely to result in exactly
15 the "kind of harm" which occurred – stabbing. Further, this duty analysis does not
16 even take into account the heightened duty which Capri assumed through its
17 affirmative undertaking of pairing Roger and the decedents together, which the
18 decedents detrimentally relied on.
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1 **V. PLAINTIFFS NOW KNOW THE TEXT OF THE LETTER, AND CAN**
2 **AMEND THE COMPLAINT WITH SPECIFIC LANGUAGE**
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4 Since the filing of Plaintiffs' First Amended Complaint on May 20, 2015,
5 Plaintiffs have obtained a copy of the letter given to Defendants by Horowitz.
6 Although Plaintiffs believe that the description of the letter, as pleaded, is sufficient
7 to establish actual notice of a violent threat given to Defendant, Plaintiffs are now
8 able to amend their First Amended Complaint to include the specific language of the
9 warning of violence if necessary.
10

11 **VI. CONCLUSION**
12

13 Plaintiffs' First Amended Complaint has sufficiently pleaded and alleged facts
14 which give rise to a duty on the part of Capri. Defendant Capri, in affirmatively
15 undertaking to pair decedents Hong and Wang together with Elliot Rodger, and
16 placing them as roommates within the four walls of Apartment #7, assumed a duty to
17 perform that pairing reasonably and to take reasonable minimum steps to protect the
18 decedents from foreseeable harm. Further, even in the absence of such assumption of
19 a duty, because the Defendant had a special relationship with decedents, and because
20 they had been warned and given specific, actual knowledge that Rodger "was a
21 threat and that he posed a danger" to a former roommate, Capri had a duty to take, at
22 a minimum, the reasonable and minimally burdensome act of warning or otherwise
23 informing the decedents of that danger. Plaintiffs in no way have alleged that Capri
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1 had a duty to diagnose mental illness or discriminate against it. Plaintiffs have
2 alleged, however, that when a landlord is specifically informed that a tenant poses a
3 reasonably likely threat of violence, regardless of the reason that person poses such a
4 threat (be it mental illness or any other cause), that the landlord has a reasonable
5 minimum duty to warn other tenants that are directly exposed to that threat,
6 particularly when the landlord is engaged in affirmatively pairing roommates
7 together.
8

9
10 For the foregoing reasons, Defendant Capri's Motion to Dismiss Plaintiffs'
11 First Amended Complaint should be denied.
12

13
14 Dated: June 22, 2015.

McNICHOLAS & McNICHOLAS, LLP
15
16 BECKER LAW GROUP

17
18 By: /s/ Patrick McNicholas
19 Patrick McNicholas
20 David Angeloff
21 Attorneys for Plaintiffs,
22 JUNAN CHEN, KELLY YAO WANG,
23 CHANGSHUANG WANG,
24 JINSHUANG LIU, LICHU CHEN, and
25 WENQUEI HONG
26
27
28

DECLARATION OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Los Angeles County. I am over the age of eighteen years and not a party to the within entitled action; my business address is 10866 Wilshire Boulevard, Suite 1400, Los Angeles, CA.

On June 22, 2015, I served a true copy of the within [DOC NAME] on the interested parties in this action by:

X electronic transmission via CM/ECF to the persons indicated below:

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X (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on June 22, 2015, at Los Angeles, California

/s/Millie A. Capellan
Millie A. Capellan